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PEABODY ENERGY CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKI AND DIVISION

16 NATIVE VILLAGE OF KIVALINA, *et al.*,) CASE NO. C08-01138 SBA
17 Plaintiffs,)
18 v.)
19 EXXONMOBIL CORPORATION, *et al.*,)
20 Defendants)
21)

**AMENDED PROPOSED ORDER GRANTING MOTION TO DISMISS
OF DEFENDANT PEABODY ENERGY CORPORATION
FOR LACK OF PERSONAL JURISDICTION**

This cause came before the Court for hearing of Motion to Dismiss of Defendant Peabody Energy Corporation for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2), filed on June 30, 2008. A hearing was conducted on December 9, 2008, at which counsel for plaintiffs and defendants appeared. After consideration of the arguments, and based on the Statement of Facts and Analysis below, this Court finds that it lacks personal jurisdiction over Amended [Proposed] Order Granting Motion to Dismiss of Defendant Peabody Energy Corporation – C08-01138 SBA

over defendant Peabody Energy Corporation (“Peabody”).

STATEMENT OF FACTS

Plaintiffs are an Alaskan tribe and a municipality incorporated in Alaska, which is occupied primarily by the members of the tribe. They reside 70 miles north of the Arctic Circle and have no apparent connection to California, let alone to this judicial district. Through this action, they are seeking damages for purported “global warming” torts. Plaintiffs allege that greenhouse gases, and the phenomenon called climate change, are causing a loss of arctic sea ice along the coast of Kivalina, which has increased Kivalina’s vulnerability to coastal erosion. *See* Compl. ¶ 185. They claim that coastal erosion risks destruction of structures and infrastructure in the village, and Kivalina is in danger of flooding. *Id.* ¶¶ 4, 185. As a result, their village will need to be abandoned or relocated as a result of climate change-related damages. *Id.* ¶ 1, 186.

The Complaint alleges with respect to Peabody that it does business in California (*id.* ¶ 52); it supplied electricity to California through subsidiaries in 1999 (*id.* ¶ 54); through the operation of the Black Mesa Coal Mine, it supplied coal slurry to a Nevada generating station which in turn supplied electricity to California (*id.* ¶ 55); it is registered to do business in California (*id.* ¶ 55); it is a company in which the California Public Employees' Retirement System owns shares (*id.* ¶ 56); and it has solicited shareholders in California through the mail and directed the deposit of dividend checks into the California banks of shareholders. (*Id.* ¶ 56).

STANDARD OF REVIEW

Where the Court lacks jurisdiction over the defendant's *person*, the lawsuit must be dismissed as to that defendant. *See Fed. R. Civ. P. 12(b)(2); World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). In determining issues of jurisdiction, the Court may consider facts established by affidavit that demonstrate the falsity of allegations in the Complaint. *See Tercica, Inc. v. Insmed Inc.*, No. 05-5027, 2006 WL 1626930, at *8 (N.D. Cal.

1 June 9, 2006) (Armstrong, J.).

2 Once personal jurisdiction is challenged, it is the plaintiffs' burden to show that
 3 jurisdiction exists. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d
 4 1122, 1128-29 (9th Cir. 2003). Plaintiffs may not rely on conclusory allegations to establish
 5 personal jurisdiction. *See Data Disc., Inc. v. Systems Tech. Assocs., Inc.*, 557 F.2d 1280, 1285
 6 (9th Cir. 1977). Because the touchstone of the personal jurisdiction inquiry is whether exercising
 7 personal jurisdiction over a non-resident defendant would comport with due process, it is
 8 plaintiffs' burden to show that the Court's exercise of jurisdiction over Peabody would satisfy
 9 the Due Process Clause, as well as traditional notions of fair play and substantial justice. *See*
 10 *Harris Rutsky*, 328 F.3d at 1129.

ANALYSIS

14 The Due Process Clause of the Fourteenth Amendment protects a non-resident entity
 15 from suit in a jurisdiction with which the entity has no meaningful "contacts, ties, or relations."
 16 *Int'l Shoe v. Washington*, 326 U.S. 310, 319 (1945). Due process is satisfied only if the facts
 17 warrant the exercise of either "general" or "specific" jurisdiction over the defendant. *See Harris*
 18 *Rutsky*, 328 F.3d at 1129 & n.1.

19 General jurisdiction exists only where a defendant's contacts with the forum state are so
 20 "continuous and systematic" that a court may exercise jurisdiction regardless of whether the
 21 lawsuit stems from a particular contact. *See Helicopteros Nacionales de Columbia v. Hall*, 466
 22 U.S. 408, 415 (1984).

24 To demonstrate that specific jurisdiction exists, plaintiffs must show that: (1) defendant
 25 purposefully directed its activities toward California or consummated a transaction within
 26 California; (2) the claims arise out of such activities; and (3) the Court's exercise of jurisdiction
 27 over defendant would comport with notions of fair play and substantial justice. *See Harris*
 28

1 *Rutsky*, 328 F.3d at 1129; *see also Helicopteros Nacionales*, 466 U.S. at 414 n.8; *Burger King*
 2 *Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 & n.15 (1985); *Int'l Shoe*, 326 U.S. at 316. The
 3 requirement for “purposeful availment” ensures that a defendant will not be haled into court in a
 4 jurisdiction with which he is not familiar on the basis of “random,” “fortuitous,” or “attenuated”
 5 contacts. *See Burger King*, 471 U.S. at 475. The conduct of which the plaintiffs complain must
 6 demonstrate that defendant “deliberately ... engaged in significant activities within” California
 7 and thereby established a “substantial connection” to the State. *See id.* at 475-76. As the Ninth
 8 Circuit has put it, this test “requires a ‘qualitative evaluation of the defendant’s contact with the
 9 forum state.’” *Harris Rutsky*, 328 F.3d at 1130 (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th
 10 Cir. 1987)). The contact need not be physical if the effects of the defendant’s actions are felt in
 11 California, but even under this “effects test,” a plaintiff still must show that the defendant (1)
 12 intentionally acted (2) through conduct aimed at the forum state, which (3) caused harm that the
 13 defendant knew was likely to be, and was, felt in the forum state. *See id.* at 1131 (citing *Calder*
 14 *v. Jones*, 465 U.S. 783 (1984)).

17 The Court lacks both general and specific jurisdiction over Peabody. Peabody is
 18 incorporated in Delaware and maintains its principal place of business in St. Louis, Missouri. It
 19 is not a California resident and does not maintain a business office in California. *See Affidavit*
 20 of John F. Quinn, Jr. (“Quinn Affidavit”) (Exh. 1) ¶¶ 5, 10. It also does not do business in the
 21 State of California and has not purposefully directed any corporate acts toward California or its
 22 residents, such as supplying electricity to California. *See id.* ¶¶ 4, 6. Furthermore, Peabody does
 23 not have any existing coal supply contracts in California, does not pay taxes to California, and
 24 does not maintain bank or investment accounts in California. *Id.* ¶¶ 7, 8, 9.

26 Moreover, plaintiffs cannot show that the Court has specific jurisdiction over Peabody
 27 because they have not alleged any facts that demonstrate that Peabody acted with the intent of
 28

1 affecting the legally protected rights or interests of any California resident, or that any of
 2 Peabody's conduct did in fact have a negative impact on California. *See Burger King*, 471 U.S.
 3 at 475. The alleged injury in this case occurred in Alaska and plaintiffs are themselves Alaskan
 4 residents and plead no connection to California. Peabody did not anticipate, and could not have
 5 anticipated, that its lawful business practices would have negative consequences in the forum
 6 state of California (or Alaska, for that matter).

8 Based on the foregoing discussion, the Court also finds that exercising jurisdiction over
 9 Peabody under either a "general" or "specific" theory of personal jurisdiction would violate
 10 Peabody's due process rights because Peabody has no meaningful contacts, ties or relations with
 11 California. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122,
 12 1132 (9th Cir. 2003). Under plaintiffs' legal theory of liability, every judicial forum in the
 13 United States would have personal jurisdiction over Peabody, given that plaintiffs allege that
 14 defendants' emissions are global in scope. This is an untenable position and one that would lead
 15 to a fundamentally unfair result.

CONCLUSION

18 For the reasons stated above, the Court finds that it lacks personal jurisdiction over
 19 Peabody. Thus, it is hereby ORDERED AND ADJUDGED that the Motion to Dismiss of
 20 Defendant Peabody Energy Corporation for Lack of Personal Jurisdiction Pursuant to Fed. R.
 21 Civ. P. 12(b)(2) is GRANTED and plaintiffs' claims are hereby DISMISSED with prejudice as
 22 to Peabody.

24 So ORDERED AND ADJUDGED this the _____ day of _____, 2008.

26 _____
 27 Saundra Brown Armstrong
 United States District Judge

CERTIFICATE OF SERVICE

I, Tracy A. Roman, certify that on July 1, 2008, I electronically filed the foregoing Amended Proposed Order Granting the Motion to Dismiss of Defendant Peabody Energy Corporation for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2) through the Court's ECF System and the document is available for downloading. I also certify that on July 1, 2008, copies of the foregoing documents were served via U. S. Mail on the following:

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